

SN



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,080	01/20/2004	Jason Collins	8713-PA01	4613
27111	7590	03/17/2005		
GORDON & REES LLP			EXAMINER	
101 WEST BROADWAY			PATEL, MITAL B	
SUITE 1600				
SAN DIEGO, CA 92101			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/762,080	COLLINS, JASON
	Examiner Mital B. Patel	Art Unit 3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 December 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 11, 12 and 17-24 is/are allowed.
- 6) Claim(s) 1, 2, 7-10 and 13-16 is/are rejected.
- 7) Claim(s) 3-6 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment/Arguments

1. Applicant's arguments, filed 12/20/04, with respect to the rejection(s) of claim(s) 1,2,7,8,9,10,13,14,15 and 16 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Crofutt (US 145,337).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 7, 9, 10, 13, 14, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Crofutt (US 145,337).

4. As to claim 1, Crofutt teaches a protective mask for resisting biting by a detainee, the mask comprising: a panel of flexible, breathable (See Col. 2) material **B** shaped to extend across and cover the nose, mouth and cheeks of a wearer; the panel having an upper edge for extending across the bridge of a wearer's nose, a lower edge for locating at or below a wearer's chin, opposite sides for positioning adjacent the ears of the wearer, an inner face for facing towards a wearer's face, and an outer face (See Fig. 1); at least one fastener strap **C** extending between the opposite sides of the panel for extending around the back of a wearer's head in order to secure the panel in position

across a wearer's face; and the panel having a central region which is folded about an axis extending from the lower edge towards the upper edge of the panel to provide a tented, open chamber facing a wearer's face and extending below the nose and over the mouth of the wearer, the tented chamber having an open lower end at the lower edge of the panel to allow escape of body fluids.

5. **As to claim 2,** Crofutt teaches a mask, wherein the panel is of a breathable, flexible fabric material to allow external air to freely enter the chamber (**See Col. 1, last paragraph and Col. 2.**)
6. **As to claim 7,** Crofutt teaches a mask, wherein the fastener strap is of elastic strip material (**See Col. 2, line 5.**)
7. **As to claim 9,** Crofutt teaches a mask, wherein at least one fastener strap extends between opposite sides of the panel at locations adjacent the upper edge of the panel, whereby the upper edge of the panel is held closely against the wearer's face when the mask is worn (**See Fig. 1.**)
8. **As to claim 10,** Crofutt teaches a mask, wherein the lower edge of the panel hangs free and unsecured when the mask is worn (**See Fig. 1.**)
9. **As to claim 13,** Crofutt teaches a mask wherein the panel comprises two layers of material (**the Examiner considers the teaching in Col. 2. of the curtain being made from a filling or lining to be the second layer**) secured together around at least the upper, lower and side edges of the panel. However, if Applicant disagrees with the Examiner's reading of the Crofutt teaching, then the Examiner would like to draw Applicant's attention to the disclosure on page 6 and 7 of the specification which

teaches that the mask may be a single layer of material, thereby teaching away from a criticality that the mask must be made of two layers.

10. **As to claim 14,** Crofutt teaches a mask, wherein the panel is formed from a single sheet of material folded in half lengthwise to form said two layers. It should be noted that how the panel is formed is not given patentable weight in a product claim. Rather, patentable weight is given to the end product in this case the end product being two layers, which is taught by Crofutt, see Fig. 1. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted).

11. **As to claim 15,** Crofutt teaches a mask, wherein the fastener strap comprises an elastic member extending between the two layers of material across the upper edge of the panel and outwardly from opposite sides of the panel for extending around the back of the wearer's head .

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 8 and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Crofutt (US 145,337).

15. **As to claims 8 and 16**, Crofutt teaches essentially all of the limitations except for including two spaced fastener straps extending from each side of the panel. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide additional straps for added securement. Furthermore, the use of multiple straps is well known in the respiratory mask art.

Allowable Subject Matter

16. Claims 3-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. Claims 11, 12, and 17-24 are allowed over the prior art of record.

18. The following is a statement of reasons for the indication of allowable subject matter: As to claims 3, 17 and 24, the prior art of record does not teach nor render

obvious the overall claimed combination of a mask including an elongate strip member secured to the central region of the inner face of the panel to extend transversely across the mouth of the wearer and resisting biting by the wearer through the panel. As to claim 11, the prior art of record does not teach nor render obvious the overall claimed combination of a mask including a fold-forming strip of material secured between opposing, spaced portions of the inner face of the panel in the central region to hold the central region in a folded condition.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5706802, US 5595174, US 5099525, US 5058211, US 3249108, US 3058463, US 2566557, US 2038310, US 1150991, and US 319338.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 571-272-4802. The examiner can normally be reached on Monday-Friday (11:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



3/15/05

Mital B. Patel
Examiner
Art Unit 3743